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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,664	09/12/2003	Kelyn Anne Arora	8462C	9494

27752 7590 03/17/2006

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EXAMINER

SALVATORE, LYNDIA

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,664

Applicant(s)

ARORA ET AL.

Examiner

Lynda M. Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,20-24 is/are pending in the application.
- 4a) Of the above claim(s) 22-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-16,20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment and accompanying remarks filed 1/04/06 have been fully considered and entered. Claims 2 and 17-19 have been canceled, claims 21-24 have been added, and claims 1,3-6 and 10-16 have been amended as requested. Applicant's amendments are not found patently distinguishable over the prior art made of record and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Election/Restrictions

2. Newly submitted claims 22-24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 22-24 are directed to a method for making a non-woven web.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102/103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1,3-10, 13,14,16 and 20 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Haynes et al., US 6,686,303 for reasons set forth in section 2 of the last Office Action. Additionally, new claim 21 is rejected

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under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Haynes et al., US 6,686,303.

Applicant amended claim 1 to recite “wherein the split fibers are obtained by stretching a splittable composite fibers” and added new claim 21 which recites stretching via ring-rolling. Applicant argues that the prior art of Haynes et al., does not teach the claimed process of stretching to obtain split fibers. Rather, the relied upon prior art teach splitting the fiber without mechanical agitation. This argument is not found persuasive.

It is respectfully pointed out that the presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product (*In re Stephens*, 145 USPQ).

In the instant case, it appears that the final product taught by Haynes et al., is the same or similar to that of the claimed final product, although produce by a different process (e.g., split fibers comprising diameters less than or equal to 30 microns). Recall, the patent issued to Haynes et al., teaches bi-component splittable fibers comprising polyethylene and polypropylene (title and column 6, 41-50). Haynes et al., teach an average diameter ranging from 1-75 microns before splitting (column 7, 5-15). With regard to the limitation of split fibers comprising diameters less than or equal to 30, assuming a fiber diameter of 50 microns evenly splits, the result would be at least two fibers having a diameter of less than 30 micron. Accordingly, it is the position of the Examiner that once the splittable fibers of Haynes et al., are split, the claimed final product structural limitations of having diameters of less than 30 microns would be met. In this instance, the burden shifts to Applicant to come forward with evidence establishing an

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unobvious difference between the claimed final product and the prior art final product (*In re Marosi*, 218 USPQ 289,292).

To reiterate, the patent issued to Haynes et al., teach bi-component splittable fibers comprising polyethylene and polypropylene (title and column 6, 41-50). Haynes et al., teach an average diameter ranging from 1-75 microns before splitting (column 7, 5-15). Haynes et al., exemplifies a side-by-side arrangement (column 6, 31-40). Haynes et al., teach round, oval and/or multi-lobal shapes (column 12, 46-60). Haynes et al., teach providing a non-woven, which can be used to make a variety of disposable personal care articles (column 13, 60-column 14,10). With regard to claim 19, Haynes et al., teach splitting the fibers with hot water (column 11, 65-column 12, 15). With regard to claim 20, Haynes et al., teach forming a non-woven by through-air-bonding, thermal point bonding or entangling (column 9, 44-60).

Although, Haynes et al., does not specifically teach the claimed elongation feature, it is reasonable to presume that said feature is inherent to the splittable bi-component fibers taught by Haynes et al. Support for said presumption is found in the use of like materials such as splittable fibers having the claimed diameter range, which would result in the claimed elongation feature. The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently claimed elongation feature would obviously have been present once the Haynes et al., product is provided. *In re Best* 195 USPQ 433

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 11,12 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes et al., US 6,686,303 in view of Pike et al., US 5,759,926 for reasons set forth in section 4 of the last Office Action.

The above rejection from claims 11,12 and 15 are maintained and Applicant has not presented any new arguments for which to consider.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 8, 2006

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Ula Ruddock
ULA RUDDOCK
PRIMARY EXAMINER